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ES
SUBJECT: EL SALVADOR: 2010 TRAFFICKING IN PERSONS (TIP) REPORT

REF: 09 STATE 2094; 09 STATE 5577

SUMMARY

11. (U) Summary: Pursuant to ref A, this cable provides information on trafficking in persons (TIP) in El Salvador in accordance with the Trafficking Victims Protection Act (TVPA) of 12000. The text directly tracks ref tel paragraphs 25-29 and relevant subsections. Note internal paragraph numbering.

12. (U) During 2009, the government of El Salvador (GOES), in conjunction with various non-governmental organizations (NGOs), conducted information and education campaigns specifically designed to combat trafficking in persons. The GOES has invested \$574,277.82 to assist TIP victims. There were no new laws promulgated in 2009 relating to TIP. End Summary.

Paragraph 25 - El Salvador's TIP Situation

1A. (U) Sources of TIP information are the International Labor Organization (ILO), the National Civilian Police (PNC), the Salvadoran Institute for the Comprehensive Development of Children and Adolescents (ISNA), the Attorney General's office (AG), the Salvadoran Institute for Women's Development (ISDEMU), the Migration Directorate (DGME), the Ministry of Foreign Affairs (MFA), and the NGO Save the Children. Although, in general, these sources are reliable, the full extent of trafficking is unknown due to a lack of accurate statistics. During the reporting period, the AG implemented an electronic data system (Spanish acronym, SICEE) that tracks investigations, prosecutions and convictions. However, the information provided by the AG does not conform with that provided by the PNC. The two agencies are working together to harmonize their statistics.

1B. (U) El Salvador is a country of origin, transit, and/or destination for women and children subjected to commercial sexual exploitation and forced labor. Salvadoran nationals and residents are also subjected to trafficking within the country. However, all

trafficking cases occurred within territories in the government's control. The majority of victims are women and girls who are trafficked from the countryside or poor urban areas to population centers to serve as prostitutes trafficked for commercial sexual exploitation. The MFA reported 55 victims in 2009. Six victims were from the Dominican Republic, three from Nicaragua, four from Honduras, two from Guatemala, and 40 from El Salvador. There is no evidence that there has been a significant change in the type of trafficking during the reporting period.

¶C. (U) Trafficked victims are subjected to a wide range of unhealthy and abusive conditions. NGOs report that, although some victims are not deprived of their physical liberty, they are economically or emotionally tied to their traffickers, and are often addicted to drugs.

¶D. (U) Salvadoran traffickers target females from 12-18 years of age, persons from low-income areas, abandoned children, children and adolescents without formal education, and unemployed young men.

¶E. (U) According to the MFA, traffickers can be owners or managers of topless bars and brothels, bartenders, security guards, or taxi

drivers. Some of them run family businesses, while others belong to organized crime. Some employers practice labor exploitation. Traffickers often deceive victims through lucrative job offers. Other victims are sold by their families or friends, or join friends who have been deceived by traffickers. Traffickers use fraudulent documents to traffic foreign victims.

Paragraph 26 - Setting the Scene

¶A. The government does acknowledge that trafficking is a problem.

¶B. The National Committee to Combat Trafficking in Persons is a task force made up of the government agencies responsible for addressing TIP. Its members include the MFA, Ministry of Education, Ministry of Public Security, Ministry of Labor (MOL), the PNC, the AG, ISNA, and ISDEMU. The MFA coordinates this committee. During the year, they conducted anti-trafficking training and information programs, and provided assistance to victims.

¶C. Financial constraints limit the government's ability to combat and prevent trafficking. Additionally, cultural biases sometimes prevent officers from recognizing human rights problems related to TIP. NGOs and other groups reported that corruption is a significant obstacle. They also reported that the government is hampered by a lack of organization and the inability to conduct proper forensic investigations.

¶D. According to the MFA, the government monitors its anti-trafficking efforts annually on all fronts -- prosecution, victim protection, and prevention -- when the trafficking committee presents its annual report before the Legislative Assembly.

1E. The government has merged the MFA data base (Asylum, Refugee, and others) with those of the Ministry of Justice and Public Security (Migration issues, including passports), and the National Registry of Natural People (Salvadoran IDs.) Additionally, the Executive Branch coordinates efforts with the municipalities in order to obtain birth certificates rapidly. However, each one of El Salvador's 262 municipalities is independent and has its own procedures to issue birth certificates.

1F. The criteria for data collection vary from agency to agency, and each agency has its own data information center. This slows the process of data gathering.

PARAGRAPH 27 - INVESTIGATION AND PROSECUTION

During this reporting period, the government has not enacted new TIP legislation. The law covers both internal and transnational forms of trafficking.

1A. Article 367-B of the Penal code specifically prohibits trafficking in persons for sexual and non-sexual purposes. Article 367-C provides increased penalties for aggravated circumstances, e.g., when the accused is an official, if the victim is a minor, or if the victim has diminished capacity. The law applies to internal and transnational trafficking. In addition to trafficking,

perpetrators can be charged with pandering, deprivation of liberty, and child endangerment.

Article 367-B of Salvadoran Criminal Code states: "Anyone who, either on his own behalf, or as a member of a national or international organization, for the purpose of obtaining an economic benefit, recruits, transports, moves, welcomes or receives people, outside or within the national territory, to carry out any activity of sexual exploitation, keep them in work or forced servitude, in similar practices to slavery, or for the extraction of (human) organs, fraudulent adoptions, or forced marriages, will be punished by imprisonment from four to eight years. When the victim is under 18 years or is of diminished mental capacity, the term will increase up to one-third of the above-mentioned maximum. Anyone that facilitates, promotes or supports any of the above-mentioned activities will be punished by imprisonment from three to six years. When the described actions take place in commercial locations or any location that requires a special permit from a competent authority, such authority will revoke the permit and will proceed to immediately close it." (unofficial translation)

The Spanish text of article 367-B of the Salvadoran Criminal Code, which entered into force in January 2004, is as follows:

TRATA DE PERSONAS

Art. 367-B.- El que por s???? o como miembro de una organizaci????n nacional o internacional con el prop????sito de obtener un beneficio econ????mico reclute, transporte, traslade, acoja o recepte personas, dentro o fuera del territorio nacional, para ejecutar cualquier actividad de explotaci????n sexual, mantenerlas en trabajos o

servicios forzados, en prácticas análogas a la esclavitud, o para extracciones de órganos, adopciones fraudulentas o celebraciones de matrimonios forzados, ser sancionado con pena de cuatro a ocho años de prisión. Cuando la víctima sea persona menor de dieciocho años o incapaz, la pena se aumentará hasta en una tercera parte del máximo establecido. Todo aquel que facilitare, promoviere o favoreciere cualquiera de las actividades anteriores será sancionado con pena de tres a seis años de prisión. Cuando las acciones descritas se realizaren en locales comerciales o de cualquier naturaleza que requiera permiso de autoridad competente, ésta deberá revocarlo procediendo al cierre inmediato del mismo.

B. Article 367-B of the Salvadoran Penal Code provides penalties for trafficking for sexual exploitation of four to eight years in prison. Penalties can be increased up to one-third of the maximum penalty if the victim is a minor or the trafficker is a public official or law enforcement agent, or if the crime was committed as part of abuse of authority in domestic, educational, or labor relationships; or if as a consequence of the crime, the victim dies or is deprived of his or her freedom of transit. Because El Salvador does not have an asset forfeiture law, traffickers' properties cannot be seized. Traffickers may be liable for civil damages. However, victims can only sue for damages after the case has been tried in criminal court and there is no basis for further appeal. Therefore, in practice, civil damages are rarely imposed.

C. Article 367-B of the Salvadoran Penal Code provides for penalties for trafficking for labor exploitation of four to eight years in prison. Penalties can be increased up to one-third of the maximum penalty if the victim is a minor; if the trafficker is a public official or law enforcement agent; if the crime was committed as part of abuse of authority in domestic, educational, or labor relations; or if, as a consequence of the crime, the victim dies or is deprived of his or her freedom of transit. Forced or compulsory labor is also prohibited by the Salvadoran Constitution, except in cases of public calamity and other instances specified by law. All forms of slavery or practices similar to slavery are forbidden under a general provision of the Salvadoran Constitution, as well as under the criminal code.

D. The criminal code provides penalties of six to 20 years in prison for rape. If the victim is younger than 15 years old, or is of diminished mental capacity, unconscious, or incapable of resisting, the sentence ranges from 14 to 20 years. The Salvadoran criminal code establishes prison sentences from three to 10 years for other types of sexual assault. If rape or sexual aggression is committed by a member of the victim's family, the penalty could be increased by up to one-third of the maximum penalty. According to the Office of the Attorney General, Salvadoran prosecutors often prefer to prosecute criminals under rape charges rather than TIP charges because the mandated sentences are stronger for rape charges.

E. During the reporting period, the government reported that it had investigated 72 cases of human trafficking, resulting in eight trials and eight convictions. Plea bargaining, parole, or release on bail do not apply to TIP charges. The government did not provide detailed information on victims' ages. However, the PNC reported all of them were females. There were no cases of the government criminally prosecuting labor recruiters for recruiting workers using knowingly fraudulent or deceptive offers or by imposing fees or commissions for the purpose of subjecting the worker to debt bondage. There were no cases of the government criminally prosecuting employers or labor agents for confiscating

workers' passports or travel documents for the purpose of trafficking; for switching contracts or terms of employment without the worker's consent to keep workers in a state of service; for physical or sexual abuse or the threat of such abuse to keep workers in a state of service; or for withholding payment of salaries as a means to keep workers in a state of service.

¶F. The government has provided specialized training for officials to recognize, investigate, and prosecute trafficking. Additionally, the International Law Enforcement Academy (ILEA), the International Organization for Migration (IOM), and Save the Children have trained public officials on TIP.

¶G. The government cooperates with other governments in the investigation and prosecution of trafficking cases. The government reported that, during the reporting period it cooperated in investigations with the Dominican Republic, Guatemala, Honduras, and Nicaragua.

¶H. During the reporting period, the government has not extradited persons charged with trafficking in other countries.

¶I. Post has no evidence of government tolerance of trafficking.

¶J. During the reporting period, the government has investigated three public officials under TIP-related charges, including the former TIP Coordinator of the AG.

¶K. El Salvador has contributed eleven regiments to several peacekeeping operations. There have been no reports of Salvadorans nationals being involved in TIP or exploitation of TIP victims in this region.

¶L. Post has no evidence that El Salvador is a child sex tourism destination. El Salvador saw no cases of foreign pedophiles. El Salvador's sexual abuse laws do have extraterritorial coverage, but no Salvadoran nationals were prosecuted under extraterritorial provisions during the reporting period.

PARAGRAPH 28 - PROTECTION AND ASSISTANCE TO VICTIMS

¶A. In law and in practice, the government provides security protection to all victims and witnesses who request it. Some were accommodated in a special shelter for TIP victims where they received psychological and medical care. Officers from the PNC witness protection program provide 24-hour protection to the TIP shelter.

¶B. The government has victim care facilities accessible to trafficking victims. Foreign victims are given the same access to care as domestic victims. The government had a specialized facility dedicated to female victims of trafficking. At present, the shelter is being operated by ISNA, an agency that provides care to trafficking victims and to children who are orphans, abandoned,

or homeless. The government reported that it spent \$574,277.82 on facilities to care for TIP victims during the reporting period.

1C. The government provides trafficking victims with access to legal, medical, and psychological services through the aforementioned shelter, currently operated by ISNA. The GOES provides funds from its national budget to run the shelter.

1D. The government reported that in 2009, the migration office did not receive any requests for temporary or permanent residence from TIP victims. However, the government can grant temporary residence based on international law (Palermo Protocol) or upon a request from the AG and ISNA to the General Director of Migration.

1E. The government reported no cases of victims seeking long-term shelter or housing benefits.

1F. The government does not have a referral process to transfer victims detained, arrested, or placed in protective custody by law enforcement authorities to institutions that provide short or long-term care. The government does not deprive qualified victims of their right of freedom.

1G. During the reporting period, authorities reported 55 trafficking victims. All of the victims were referred to assistance programs by law enforcement authorities. Forty-four were referred to care facilities by government-funded assistance programs, and nine were referred to care facilities run by Save the Children. The IOM also provided adult TIP victims with technical and financial assistance to help them find work in the agricultural sector. The victims chose the work themselves.

1H. The government has a system for identifying trafficking victims in the border regions. When an official identifies a potential trafficking victim, he/she fills out a form containing the victim's personal data, and submits the form to the Director General of Migration's Trafficking Prevention section. The information is then transmitted to the Investigations Unit so that it can be relayed to the Trafficking Department of the Border Division of the PNC. The government does not have a mechanism for screening for trafficking victims among persons involved in the commercial sex trade.

1I. El Salvador protects the rights of TIP victims. Victims are not subject to prosecution, detention, or fines.

1J. Victims are encouraged by the government to assist the investigation and prosecution of trafficking, although many refuse to do so. During the reporting period, 55 victims participated in the investigation or prosecution of traffickers. Victims may file civil suits or seek legal action against traffickers, and are free to pursue legal action unimpeded. Salvadoran law allows foreign TIP victims the right to work, but post does not have knowledge of any TIP victim who has made that request. The government reports that victims have means of obtaining restitution.

1K. The government provides training for government officials in identifying TIP violations and assisting victims, including the special needs of trafficked children. The government also provides

training and assistance to its embassies and consulates in foreign countries that are destination or transit countries for TIP. The government reported that Salvadoran embassies and consulates in foreign countries abroad provided assistance to 21 victims. Additionally, El Salvador is an active member of the Regional Conference on Migration. El Salvador has a TIP agreement with Guatemala, and the Salvadoran Consulate in Tapachula, Mexico is part of the network against TIP. El Salvador has drafted guidelines for its Foreign Service on combating TIP.

¶L. The government maintains "Protection Consulates" (Consulados de Proteccion) along the major human smuggling and trafficking routes between El Salvador and the U.S. These consulates arrange immediate medical care for all injured Salvadorans, including TIP victims. After victims are repatriated, they have the option of seeking additional government-funded medical attention or returning to their residence. If they are indigent, the government provides temporary housing, financial aid, and job placement support.

¶M. Save the Children and the International Organization for Migration (IOM) are the most active anti-TIP NGOs. Save the Children provided victims with psychological and medical care. The IOM provided victims with technical and financial assistance on agriculture in order to help victims to find work. The IOM reported that victims chose their work. The IOM also conducted an awareness campaign from July to October aimed at encouraging people to dial 911 to report TIP cases. The IOM also assisted the government in their strategic planning to combat and prevent TIP.

PARAGRAPH 29 - PREVENTION

¶A. During the reporting period, the government ran anti-trafficking information and education campaigns. During the year, the government trained officers to differentiate sexual commercial exploitation, child pornography, trafficking in persons, and alien smuggling. In May, the government, in conjunction with CARE, launched a campaign aimed at increasing the number of sexual abuse complaints filed by children. This campaign had a special component against sexual commercial exploitation, including performances of plays at schools, involving 2,375 children and 2,119 adults. ISDEMU also launched an awareness campaign that reached 8,959 children.

¶B. The PNC and the Directorate General of Migration jointly patrol key locations to prevent and combat TIP. Additionally, the PNC Border Division uses migration profiles to study migration flows and to detect TIP cases.

¶C. The National Committee Against Trafficking in Persons (the TIP task force) is comprised of 15 government agencies concerned with trafficking, including: the Ministries of Foreign Affairs, Finance, Education, Labor, Health, Tourism, the PNC, the Office of Migration (which is attached to the Ministry of Justice and Public Security), the National Secretariat of Social Inclusion, the AG, the Solicitor's Office, the Legislative Assembly, ISNA, and ISDEMU. The GOES has a coordination and communication protocol that involves all the members of the TIP committee. The MFA chairs the

group, while each agency has jurisdiction over its responsibilities. The government has a corruption committee coordinated by the Ethics Tribunal that oversee public officers.

1D. The government's national action plan to address TIP was drafted in 2007. The government implements its agenda through strategic annual planning aimed at accomplishing the plan's objectives. The International Labor Office and the International Organization for Migration (IOM) provide technical assistance to the government.

1E. The government, in conjunction with the IOM, has included a gender component in its educational campaigns in order to reduce the demand for commercial sex.

1F. During the year there were no reports of child sex tourism in El Salvador, nor of Salvadoran nationals involved in child sex tourism abroad. Based on extraterritoriality provisions in Salvadoran law, Salvadorans participating in sex tourism both at home and abroad are subject to criminal penalties in El Salvador.

1G. The government includes an anti-trafficking component in the training it gives to military forces prior to deployment for peacekeeping or similar missions.

PARAGRAPH 30 - PARTNERSHIPS

1A. The government engaged with civil society and multilateral organizations to focus attention and devote resources to addressing human trafficking. For example the government coordinates their annual strategic planning with the International Organization for Migration (IOM.) The IOM has assisted the government to develop measure lines to prove the government's efficiency to combat TIP. However, the IOM believes that the government needs more financial resources to better prevent and attack the problem. Save the Children also works in conjunction with the government to assist TIP victims. Save the Children believes that the lack of financial resources also limits the government ability to combat TIP.

1B. The government coordinates investigation efforts with other countries aimed at prosecuting TIP criminals.

PARAGRAPH 31 -CHILD SOLDIERS

During the reporting period the government did not use child soldiers as defined by the Child Soldiers Prevention Act or its Protocol.

PARAGRAPH 34 - NOMINATION OF HEROES AND BEST PRACTICES

Post has not identified heroes or best practices during the period covered by this report

Point of Contact

13. The Point of Contact for TIP issues at Embassy San Salvador is Labor Officer Michael Roth. Telephone: (503) 2501-2050. Fax: (503)2228-1857. E-mail: RothMR@state.gov.
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